

V. IMPLICATIONS OF THE FINDINGS

Our detailed findings of the experiences of small, woman and minority-owned businesses provide us with the knowledge and perspective to form broad conclusions in nine major areas concerning past, present and prospective market entry barriers, as follows:

A. Capital and Markets are the Drivers

The present broadcast and wireless industries and their regulatory structure, perhaps more than at any time in the history of the FCC and the industry, is, by design, responsive to capital and market forces. Given a well documented, established and accepted fact that (in increasing order of severity) small, women- and minority-owned businesses are capital deficient, there is little wonder that participation by such businesses in FCC licensed industries is alarmingly low, and, by all appearances, on a steep and severe decline.

In the words of one licensee interviewed, we now experience “[what] blind reliance on market forces brings you to.”

B. Absence of Critical Mass

As to women- and minority-owned companies in broadcasting, timing has been everything. Historically and systematically excluded from industry participation due to overt and passive discrimination on the part of local communities, the broadcast and advertising industries, secondary market players, and the FCC, modest inroads were made after 1978, with the adoption of minority and female ownership programs and credits. Their modest gains through the mid-1990s had hardly the opportunity to take root, and grow sufficiently strong, in order to buffer them from and increase their chance of surviving deregulation.

Powerful industry countermeasures, nurtured by Congress and the Courts, and half-heartedly opposed by the FCC, in rapid succession undid a less-than-two-decades effort to redress nearly seventy years of barriers to entry for women and minorities. The sequence of rollbacks of minority and women ownership programs and credits, industry-wide deregulation, industry-wide consolidation, even, the absence of accurate, up-to-date statistics documenting the full impact on women and minority participation, have combined to present significant barriers to women- and minority-owned businesses being significantly represented in broadcast and wireless ownership.

C. The Role of the FCC and Congress

As stated by one interviewee, “there is something besides the market in the world ... if unresolved market forces were to be the criteria under which all would be conducted, why does the Constitution give Congress the power to regulate commerce?”

As a large bureaucracy with wide-ranging responsibilities, the FCC presents myriad faces before the public. When it comes to small, women- and minority-owned businesses, the FCC too often has been perceived as being detrimental to policies, procedures and enforcement that would enhance participation by small, women- and minority-owned businesses.

This study revealed anger, frustration, disappointment, and resignation on the part of numerous small, women- and minority-owned business owners at Congress and FCC actions that have erected and heightened barriers to entry and growth. Their concerns included:

- The FCC “looking the other way” when confronted with Jim Crow discrimination in broadcasting in the American South;
- The perceived lack of strong, corrective action by the FCC on EEO and other discriminatory policies perpetuated by “big industry”;
- The FCC’s acquiescence to the distribution of licenses in the secondary market where information and capital are rationed within “old boy networks”;
- A long-standing give-and-take relationship between organized industries, e.g. broadcasters, local and long distance telephone service providers, and the FCC;
- Routine FCC acquiescence to interests in the private sector, Congress and the Courts opposed to the concerns of small, women- and minority-owned business;
- A perceived lack of responsiveness historically to advocacy by small, minority and female business interests;
- The perception of a willing acquiescence to the abandonment [by Congress] of the minority tax certificates and other “ownership programs” without substantive protest upon the earliest sign of judicial opposition;
- The FCC’s support for auctions, despite possible disparate implications of distributing wireless and broadcast licenses to the highest bidder;
- Self-interest, resistance and inertia within the FCC on small, women- and minority business issues;

Leading up to passage of the 1996 Act, advocacy and representation on behalf of small, minority and female business interests before the FCC was considered weak and ineffective, in comparison with stronger, more influential lobbies representing existing broadcasters and large corporations. Fear of reprisal from those in a bureaucracy perceived as being more concerned with future employment with large corporations served to squelch some from louder, more public dissent.

Many interviewees perceive the FCC as contributing to the lack of opportunities and participation by small, minority- and women-owned businesses in the communications market. It is little wonder that many study participants have reluctantly given up hope of prevailing as competitors in broadcast and wireless industries in the future.

D. Discrimination

Discrimination appears to have played an important role as an entry barrier, especially to minority participation in broadcasting, from;

- segregation in the Jim Crow South, legally depriving African Americans and their communities of information, employment and ownership opportunity,
- pervasive discrimination and structural barriers to financing and economic participation,
- pre-1996 Act barriers to entry and expansion based on advantages of size and scale derived under previously discriminatory advantage,
- the post-1996 Act rollback of previous advances made, primarily from the tax certificate program.

A clear majority of women and minority licensees interviewed in the study believed they had encountered discrimination in their attempts to become licensees: in raising capital, in the secondary market, and in operations. As a result, successful licensees persevered, despite discrimination at many turns, and, despite the belief that their experiences would have been significantly easier, if their circumstances had been exactly the same, and they were White males.

This anecdotal study illustrates the complex, intricate and pernicious working of historical bias and discrimination throughout our society. It demonstrates the tenacity of individuals in the face of such discrimination to persevere, to strive to break through in spite of bias. And it demonstrates the difficulty and enormous resources required to uncover definitive proof of the bias that lies within the hearts and behind the actions of some.

E. Bidding Credits in Wireless Licensing

The study participants perceived the bidding credits as a failure even though the FCC used them in the wireless auctions in an effort to enhance opportunities for small, minority-, and women-owned businesses. Few small businesses, and precious few women and minority businesses, found bidding credits of sufficient value to offset the capital resources of large companies in auction contests. The biggest impact of bidding credits, according to interviewees, was to artificially elevate the final price of wireless licenses, with little or no impact, on the eventual result of licenses being issued to small businesses.

F. Relaxation of Ownership Caps

Small-, women- and minority-owned businesses, with a small number of notable exceptions (e.g., Radio One Communications, Z-Spanish Radio, Granite Broadcasting) have been and continue to be driven rapidly out of radio and television media ownership. Nearly all cite the relaxation of ownership caps under the 1996 Act as the principal cause.

With passage of the 1996 Act, nearly every small businessperson interviewed expressed new and substantial difficulties in competing and surviving, with expansion being virtually out of the question. The result has been an avalanche of station sales to dominant national “consolidators.” This trend appears to have impacted all small and local radio broadcast businesses and has appeared to have affected minority broadcasters particularly.

G. Loss of Community Service and Diversity of Viewpoints

This study’s interviewees uniformly reported that small, minority-owned businesses are more integrated, aligned with, and responsive to the local communities that they serve. Their declining participation in broadcast and wireless ownership, it appears, has resulted in a diminished concern for local issues and needs, which has led to a loss of diversity of viewpoints.

H. Potential Loss of Civic Participation, Democratic Values and Freedom of Speech

Informal networks of licensees, attorneys, brokers and others have worked together to distribute and redistribute licenses among those with access to the secondary market for decades. Only recently have a few women and minorities been included in this network.

The interviewees reported that this lack of access to and inclusion in the secondary market network, made worse by widespread discrimination in the capital markets, and the lack of strong, effective government and regulatory intervention, has contributed to the long-standing underrepresentation of women and minorities in broadcasting.

The present day effect of these conditions, deeply rooted in exclusionary market and regulatory structures and behaviors, create current and future market entry barriers for small, women- and minority-owned businesses of crisis proportions. These barriers result in;

- fewer small, women and minority broadcast licensees,
 - fewer broadcast stations and wireless licenses owned and operated by small, women and minority licensees, and
 - fewer communities served by local and community-based small, women and minority licensees.
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This impact, especially upon small and minority-owned businesses, as became apparent in this study, was overwhelmingly clear. The result, according to many of those interviewed, has been a dramatic loss in the diversity of viewpoints provided by the nation's mass media, and a concentration of influence and control of the means of mass communication of possibly unprecedented proportions.

I. The FCC is the Public Trustee of the Broadcast and Wireless Spectrum

Passage of the 1996 Act, and the rapid and harmful impact on small, women- and minority-owned businesses as foreseen and testified to by many, calls into question the proper role of the FCC in allocating spectrum consistent with the public interest, convenience and necessity. Questions such as:

- What is the role of the FCC in an era of auctions and consolidation? How does the FCC balance its goal of maximizing revenues with maximizing diversity? Which is the greater public good?
- What constitutes appropriate trusteeship and management of public assets such as radio frequency spectrum? To whom do the airwaves belong? Do they belong to the highest bidder in auctions that will inevitably be controlled by corporations that are nearly 100% controlled by White men?
- Who protects individuals and communities from the excesses and effects of capital and markets without "appropriate constraints" on corporations?
- What governmental body provides protection against anti-competitive behavior in local markets, as the FTC and DOJ provide over national markets?
- In a free-market economy, what is the measure of "appropriate regulation?" Is the current level of FCC regulation insufficient?"

This study revealed a strong linkage between small business, local ownership and the professed core commitment by the business owner to local interest and community service. These values were offered in contrast to the obligations of publicly owned companies consolidating the broadcast industry to maximize profit and shareholder value.

Radio in particular reveals itself in the words of this study's participants to be a uniquely personalized and local voice of the community. This study, therefore, calls into question the meaning and value in our society of public service and community interest.

Frequent mention was made by participants interviewed of "profit taking at the expense of social responsibility" referring to the FCC's sponsoring of auctions to distribute licenses. Has the FCC and the government become "corrupt from greed" as many suggest, exchanging public interest for governmental revenue as its purpose, mission and charter?

In the wake of rapid technological changes and market consolidation, finally, what is the FCC's role in shepherding and leading the protection of our freedoms of speech and diversity of viewpoint on the nation's airwaves? Small, women and minority participants interviewed were passionate in their belief that vital freedoms and values have suffered, perhaps irreparably, from recent consolidations of media power in the hands of relatively few corporate owners.

To the extent that important national trusts are threatened, and possibly compromised, as this study suggests, critical questions are raised concerning the nature of the relationships, responsibilities, accountabilities, and authority between the nation's industries, its legislative and judicial branches, its citizens, and our society.

VI. CONCLUSION

Historically, minorities, and less so women and small businesses in general, have confronted barriers to entry into the broadcasting industry. An anecdotal study of this nature is particularly valuable because it specifically illustrates the difficulties faced by small, minority- and women-owned businesses. This study provides a face and voice to real-life people who have encountered barriers that are all too real. They have faced discrimination in the financial markets, limiting access to capital. They have faced discrimination in their communities, limiting access to employment opportunities and land for communication towers. They have faced discrimination in the secondary market, limiting access to information about and the opportunity to participate in the buying and selling of stations. They have faced discrimination in the advertising industry, limiting access to advertising revenue, the life blood of a broadcasting company. All of these factors have contributed to a disproportionately low number of minority and women owners in broadcasting who have been able to sustain their company's viability and position it for growth.

In the wireless industry, where realistic opportunities for small businesses to participate in acquiring licenses have only been available since the middle 1990s, lack of access to the large sums of capital needed to build out wireless systems has been the greatest barrier to entry. Wireless licensees have encountered the same difficulties acquiring debt and equity financing as those experienced by their broadcast licensee counterparts, causing many of them to default on financial obligations to the FCC, thereby having to forfeit their licenses.

To help mitigate these market forces, both the FCC and Congress have established through the years various ownership programs to increase the opportunities for market entry into both broadcasting and wireless telecommunications for small, minority- and women-owned businesses. Programs such as minority ownership programs in the comparative hearing process; bidding credits in the lotteries; and installment payments, bidding credits and favorable interest rates in the auctions, were established to enhance the probability that women, minorities and small business owners would participate in the FCC's processes for awarding new licenses. The distress sale and especially the tax certificate policies opened up access to the network of sellers and brokers in the secondary market for media properties to the often excluded minority prospective licensee.

Countering these positive programs, Congress and the courts halted what progress was being made in the increase in broadcast ownership by minorities, women and small businesses when in 1995 Congress repealed the tax certificate program and the courts ruled in Adarand, and in 1996 Congress passed the Telecommunications Act of 1996 which deregulated broadcasting and brought on a sudden and rapid consolidation of media properties into the hands of the few. It appears that the confluence of these events, with their collective negative impact on small, minority- and women-owned businesses in the broadcasting and wireless industries, has virtually forestalled any progress that was being made and has, in fact, created a crisis in participation in telecommunications by these businesses. The barriers to entry have been raised so high that, left standing, they appear virtually insurmountable. Minority, women and small business ownership

in these industries is diminishing at such an alarming rate that many we spoke with felt we had passed the point of no return.

While discussing passionately the negative financial and personal impact small, minority- and women-owned businesses are sustaining from these converging forces, the greatest concern by far of those with whom we spoke was the loss of service to their communities, the loss of diversity of viewpoint, and the threat to freedom of speech that the market consolidation in telecommunications was creating. They collectively believed that the mission of protecting the public interest must continue to be served and that market forces left to their own devices would seriously erode that purpose.

The participants in this study generally agreed that programs, such as the tax certificate policy, that provide incentives to sellers and investors to conduct business with specific groups of people work well. Without them, if history is a predictor of the future, the network of participants in the secondary market for licenses (sellers, brokers, debt and equity investors) will continue to do business with people they know and with whom they have previously had successful dealings. Without these incentives, the door to opportunity will remain closed to all new entrants except for the lucky few who come to the table with just the right mix of vision, experience, and equity.

Furthermore, we heard repeatedly that small, minority- and women-owned businesses need a louder voice before the Commission if their interests are to be served as mandated. They are lacking the resources, either individually or collectively, to be strong enough advocates for themselves. Whether it is more authority for the Office of Communications Business Opportunities or an office which helps to expedite applications and licensing for small businesses, these entities have special needs for timely responsiveness and an understanding from the Commission of the issues they confront running a small business day-to-day. As a substitute for presence before the FCC, it is also imperative that the Regulatory Flexibility Act be consistently and seriously implemented, as these actions can serve as the ombudsman for those whose voice is but a whisper.

Lastly, what also became clear through our study is that there are three government agencies, the FCC, SBA and the National Telecommunications and Information Administration (Department of Commerce) that are focused on promoting opportunities in telecommunications for small, minority and women-owned businesses. Yet there was little evidence that much, if any, collaborative effort existed to coordinate these agencies' activities to the benefit of those they are trying to serve. To have these agencies speak loudly, with one voice where possible, before the Commission and Congress would meaningfully strengthen the advocacy these businesses so dearly need.

Without serious and swift dialogue around how to overcome the market entry barriers discussed in this report, there will be little chance for small, minority- and women-owned businesses to enter into and succeed in either broadcasting or wireless telecommunications. It is important that Congress, the courts and the FCC consider the impact that market forces, left unchecked, will have on the public good. It seems that the business of telecommunications has shifted its primary focus from serving the people to serving the pocketbook. It is imperative that a new balance be achieved if the public interest is to be served.
